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Court ref: COR 2018 001914

14 January 2019

Mikaela Meggetto  
Coroner's Registrar  
Coroners Court of Victoria  
65 Kavanagh Street  
SOUTHBANK VIC 3006



Dear Ms Meggetto

**Re: Investigation into the death of Trevor J O'Brien**

Thank you for your letter of 8 October 2019 enclosing a copy of Coroner Jamieson's findings of 4 October 2019 into the death of Mr O'Brien. The Australian Competition and Consumer Commission (ACCC) notes the following Coronial recommendations.

1. That the Commonwealth Minister responsible for administering the Australian Consumer Law make a **Safety Standard** in relation to jockey-wheels under Section 104 of the Australian Consumer Law (ACL).
2. That the **Safety Standard** requires the suppliers of jockey-wheels to indicate that a jockey-wheel should not be used as a vehicle jack and that it should never be used to allow an individual to work beneath a vehicle.
3. That the **Safety Standard** requires suppliers of jockey-wheels to employ the use of warning notices, instructions and/or permanent, legible product labels to indicate the warnings noted in the second recommendation.

We have reviewed the Coroner's Report and the recommendations. Our preliminary conclusion is that the available evidence supports a view that this death may have occurred due to the foreseeable misuse of the jockey-wheel attached to the caravan.

Foreseeable use or misuse of a product is a broad category of causation. The particulars of causation leading to serious injury or death from the use of a jockey-wheel is likely to entail a range of factors including the operator, how the product is used and in what environment, other types of equipment used, what safety precautions were followed and the operator's training and experience.

We have reviewed injury data and we have received eight injury reports involving jockey-wheels since 2017. We are unaware of any additional deaths resulting from the use of a jockey-wheel. The available data indicates that there is not a high level of misuse of jockey-wheels associated with do-it-yourself (DIY) vehicle maintenance. We also note that none of the injury reports assessed by the ACCC detail the same method of injury nor outcome as detailed in the Coroner's report.

When considering regulatory intervention, the ACCC uses hazard assessment tools and principles to determine its effectiveness in mitigating the hazard. A final determination of the appropriateness of regulatory intervention requires further work, through a full safety investigation, public consultation on possible mitigation responses and a regulatory impact analysis to consider the net benefit of each option. Following this process, the ACCC would advise to the Commonwealth Minister on the appropriate use of product safety powers in the Australian Consumer Law, which may include the introduction of new safety and information standards.

The ACCC approach allows consideration of an appropriate hierarchy of risk controls. The Hierarchy of Risk Control Framework (HORC framework) within Australian Model Work Health and Safety legislation and regulations is a model we have regard to, particularly for equipment operation where the risks from DIY activities are similar to the occupational setting. The HORC framework assists in considerations for the management of identified hazards and risk through six approaches of possible interventions: elimination, substitution, isolation, engineering controls, administrative controls and the use of personal protective equipment.

The ACCC has finite resources to allocate to its consumer product safety work and therefore cannot pursue all product safety matters that come to its attention. The ACCC uses data to identify the most significant product safety risks and uses priority factors to determine the nature and timing of interventions to manage those risks. The ACCC's website details priority factors including where there is a high risk of widespread public safety due to the potential number or severity of injuries, where users are unable to perceive or safeguard against the risk of injury from a product, and where a product is targeted at vulnerable consumers, such as children.

Consequently, the Coroner's recommendation is under consideration and will remain so until a proportionate intervention is developed, or it is determined that there is no intervention that is both proportionate and likely to be effective in reducing the risk injury or death. Given the ACCC's current work program, we are unable to provide a specific timeframe.

The Coroner has noted the ACCC's active risk communication around DIY safety. To increase consumer awareness on the safe use of jockey-wheels the ACCC will look to include relevant content in our next education activity on the risks of DIY vehicle maintenance.

Separately the ACCC has been advocating for changes to address the key problems of the current product safety system, including the framework's slowness to respond to unsafe products/instances of harm, which leaves consumers at potential risk. The ACCC will continue to advocate for a new safety duty that would require traders to take reasonable steps to ensure the safety of products they place on the market.

Yours sincerely



Neville Matthew  
General Manager  
Risk Management and Policy  
Consumer Product Safety